

STATE OF DELAWARE,)
)
 Plaintiff,)
)
)
 v.) Cr. ID. No. 93008966DI
)
)
 LUTHER DICKSON,)
)
 Defendant.)

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE DENIED
AND
RULE 61 COUNSEL’S MOTION TO WITHDRAW SHOULD BE
GRANTED.**

Patrick J. Collins, Esquire, Attorney for Defendant Luther Dickson.

PARKER, Commissioner

This 24th day of September, 2019, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court as follows:

BACKGROUND AND PROCEDURAL HISTORY

In 1993, Defendant Luther Dickson was indicted on the charges of Burglary First Degree, Unlawful Sexual Intercourse First Degree, Unlawful Sexual Penetration Third Degree and Kidnapping First Degree. He was reindicted on these same charges and two additional charges of Robbery First Degree and Unlawful Sexual Contact in the Third Degree.

The charges arose out of an incident that occurred on the night of March 6-7, 1993 in which Dickson forced his way into an elderly woman's home, sexually assaulted her, stole her money, and tore her telephone lines from the wall so she would be unable to call for help.

The first jury trial in this case began on September 13, 1993. At the first trial, Federal Agent Michael Malone, a supervisor of the hair and fiber analysis section of the FBI lab in Quantico, Virginia submitted a report and testified as to microscopic hair comparison evidence (MHC evidence). At the conclusion of the first trial, the jury found Dickson guilty of Unlawful Sexual Penetration Third Degree, Unlawful Imprisonment Second Degree (a lesser-included offense of Kidnapping), and Robbery First Degree. The jury was unable to reach a verdict on the Unlawful Sexual Intercourse First

Degree and Burglary First Degree charges and a mistrial was declared as to those counts.

The second jury trial in this case was conducted on December 12-16, 1993. The State decided not to use the MHC evidence in the second trial. The State did not call Agent Malone as a witness. At the second trial, the State presented all the same evidence as it did at the first trial with the exception of the MHC evidence.

The MHC evidence was not mentioned to the jury in any fashion during the second trial.

On December 16, 1993, a second jury found Dickson guilty of Unlawful Sexual Intercourse in the First Degree and the lesser-included offense Burglary in the Second Degree.

On February 4, 1994, Dickson was sentenced. He was sentenced to life imprisonment for the Unlawful Sexual Intercourse First Degree conviction. He was sentenced to an additional ten years of incarceration on the remaining convictions, followed by probation.¹

In 1994, Dickson filed an unsuccessful direct appeal to the Delaware Supreme Court.²

¹ See, Appendix to Memorandum In Support of Motion to Withdraw as Counsel for Luther Dickson, at pgs. A918-A925.

² *Dickson v. State*, 1994 WL 632533 (Del.).

In 2010, Dickson filed an unsuccessful Rule 61 Motion for Postconviction Relief.³

**SUBJECT RULE 61 MOTION AND
COUNSEL'S MOTION TO WITHDRAW**

On November 26, 2018, Dickson filed the subject Rule 61 motion. The motion is based on newly discovered evidence/information. Dickson received a letter from the United States Department of Justice dated December 18, 2017, enclosing a letter sent to the Attorney General of Delaware addressing the MHC evidence used in Dickson's case. The letter explained that after an extensive review of its records, the FBI has determined that its expert analyst on MHC may have overstated the results of its examination by testifying to the conclusiveness of microscopic hair samples in making an identification. A copy of the FBI lab report dated August 25, 1993 authored by Agent Michael Malone was also attached to the materials provided to Dickson.⁴

By the dictates of Rule 61, Dickson's current Rule 61 motion, his second, is procedurally barred unless the motion pleads with particularity that new evidence exists that creates a strong inference that Dickson is

³ See, Superior Court Docket Nos. 30, 42, & 44.

⁴ See, Superior Court Docket No. 46.

actually innocent in fact of the acts underlying the charges of which he is convicted.⁵

Counsel was appointed to represent Dickson on the subject Rule 61 motion in order to review the transcript of the proceedings and to advocate whether an argument for a strong inference of actual innocence could be made.

On June 28, 2019, assigned counsel filed a Motion to Withdraw as Postconviction Counsel pursuant to Superior Court Criminal Rule 61(e)(7). Superior Court Criminal Rule 61(e)(7) provides that:

If counsel considers the movant's claim to be so lacking in merit that counsel cannot ethically advocate it, and counsel is not aware of any other substantial ground for relief available to the movant, counsel may move to withdraw. The motion shall explain the factual and legal basis for counsel's opinion and shall give notice that the movant may file a response to the motion within 30 days of service of the motion upon the movant.

In the motion to withdraw, Dickson's Rule 61 counsel represented that, after undertaking a thorough analysis of Dickson's claim, counsel has determined that the claim has no merit and that counsel cannot ethically

⁵ Del.Super.Ct.Crim.R. 61(d)(2).

advocate for any claim for relief.⁶ Rule 61 counsel further represented that, following a thorough review of the record, counsel was not aware of any other substantial claim for relief available to Dickson.⁷

On June 28, 2019, Dickson's Rule 61 counsel advised Dickson of his motion to withdraw and advised that he had the right to file a response thereto within 30 days, if Dickson desired to do so.⁸ Dickson did not file a response.

In order to evaluate Dickson's Rule 61 motion and to determine whether his Rule 61 counsel's motion to withdraw should be granted, the court should be satisfied that Rule 61 counsel made a conscientious examination of the record and the law for claims that could arguably support Dickson's Rule 61 motion. In addition, the court should conduct its own review of the record in order to determine whether Dickson's Rule 61 motion is without merit.⁹

⁶ See, Superior Court Docket Nos. 54, 55, 56- Defendant's Rule 61 counsel's Motion to Withdraw along with the accompanying Memorandum in Support of Motion to Withdraw and appendix.

⁷ Superior Court Docket No. 54- Rule 61 Counsel's Memorandum in Support of Motion to Withdraw, at pg. 31.

⁸ See, Superior Court Docket No. 54- letter dated June 28, 2019 advising Dickson of the Motion to Withdraw and having 30 days to file a response thereto.

⁹ *Matos v. State*, 2015 WL 5719694, *2 (Del.).

DICKSON'S RULE 61 MOTION IS WITHOUT MERIT

At the onset it is noted that the new MHC revelations does qualify as new evidence and Dickson's claim will be considered on its merits without consideration of any procedural defenses (ie. untimely, not previously raised) in the interests of justice.¹⁰

Turning to the merits of the claim, in Delaware, when new evidence exists the claim is governed by Rule 61(d)(2)(i) and the burden is on the defendant to establish that the new evidence "creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted."¹¹ Eligibility for relief under Rule 61(d)(2)(i) depends on whether the defendant can meet his burden of a strong inference of actual innocence.

Dickson cannot meet his burden in this case. As made clear in counsel's motion to withdraw, the new MHC revelations are not helpful to Dickson because MHC testimony and the report were only admitted at the first trial. The jury was unable to reach a verdict as to the Unlawful Sexual Intercourse First Degree and Burglary First Degree charges.

The MHC evidence was not used, and was not mentioned to the jury in any fashion, during the second trial. Agent Malone did not testify at

¹⁰ See, Del.Super.Ct.Crim.R. 61(i)-setting forth the procedural bars to relief.

¹¹ Del.Super.Ct.Crim.R. 61(d)(2)(i).

Dickson's second trial nor was the report admitted at the second trial. At the second trial, there was absolutely no mention of MHC evidence. At the second trial, Dickson was convicted of Unlawful Sexual Intercourse First Degree, for which he is serving a life sentence, and Burglary in the Second Degree.

The new evidence that led to the filing of this Rule 61 motion, that the FBI overstated the results of its examination of microscopic hair samples, played no part whatsoever in his conviction of Unlawful Sexual Intercourse First Degree, for which he is serving a life sentence.

The conviction and sentence for which Dickson is serving a life sentence is from the second trial and was untainted by FBI misconduct. Dickson cannot establish that new evidence shows a "strong likelihood" that Dickson is "actually innocent."

The court has reviewed the record carefully and has concluded that Dickson's Rule 61 motion is without merit. The court is also satisfied that Dickson's Rule 61 counsel made a conscientious effort to examine the record and the law and has properly determined that Dickson does not have a meritorious claim to be raised in his Rule 61 motion.

CONCLUSION

Dickson's Rule 61 motion is denied pursuant to Rule 61(d)(2)(i). The conviction and sentence for which Dickson is serving a life sentence is from the second trial which was completely untainted by FBI misconduct. Counsel's motion to withdraw is granted pursuant to Rule 61(e)(7).

For all of the foregoing reasons, Dickson's Motion for Postconviction Relief should be DENIED and Rule 61 counsel's motion to withdraw should be GRANTED.

IT IS SO RECOMMENDED.


Commissioner Lynne M. Parker

cc: Prothonotary
Mr. Luther Dickson